

FILED: November 15, 2016

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 16-2206, NLRB v. McClay Energy, Inc.  
09-CA-168156

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

([www.supremecourt.gov](http://www.supremecourt.gov))

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED**

**COUNSEL:** Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available from the clerk's office or from the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

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UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 16-2206  
(09-CA-168156)

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NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

MCCLAY ENERGY, INC.

Respondent

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J U D G M E N T

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In accordance with the decision of this court, the application for enforcement of an order of the National Labor Relations Board is granted.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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No. 16-2206  
(09-CA-168156)

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NATIONAL LABOR RELATIONS BOARD

Petitioner

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O R D E R

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Petitioner has filed an application for summary entry of a judgment enforcing an order of the National Labor Relations Board.

The court grants the application and directs entry of the proposed judgment tendered by the Board.

Entered at the direction of Judge Thacker with the concurrence of Judge Shedd and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 16-2206
v.	:	
	:	Board Case No.:
MCCLAY ENERGY, INC.	:	09-CA-168156
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, McClay Energy, Inc., its officers, agents, successors, and assigns, enforcing its order dated August 19, 2016, in Case No. 09-CA-168156, reported at 364 NLRB No. 83 (2016) and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, McClay Energy, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

## NATIONAL LABOR RELATIONS BOARD

v.

MCCLAY ENERGY, INC.

**ORDER**

McClay Energy, Inc., Hensley, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Failing and refusing to bargain collectively and in good faith with the United Mine Workers of America, District 17, as the exclusive collective-bargaining representative of employees in the following appropriate unit with respect to the effects of its decision to cease operations at its Hensley, West Virginia facility:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

- (b) Failing and refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain collectively and in good faith with the Union concerning the effects of its decision to cease operations at its Hensley, West Virginia facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

- (b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.
- (c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Furnish to the Union in a timely manner the information requested by the Union on October 13 and November 6, 2015.
- (f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and to all unit employees who were employed by the Respondent at the time that it ceased operations at its Hensley, West Virginia facility on September 24, 2015. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

**APPENDIX****NOTICE TO EMPLOYEES**

**MAILED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the United Mine Workers of America, District 17, as the exclusive collective-bargaining representative of our unit employees set forth below, with respect to the effects of our decision to cease operations at our Hensley, West Virginia facility:

All full-time and regular part-time production and maintenance employees employed by us at our Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to cease operations at our Henley, West Virginia facility, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees their normal wages for the period set forth in the remedy section of the Board's decision, with interest.

WE WILL compensate our affected employees for any adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed,



either by agreement or Board order, a report allocating the backpay to the appropriate calendar years for each employee.

WE WILL furnish the Union in a timely manner the information it requested on October 13 and November 6, 2015.

McCLAY ENERGY, INC.

The Board's decision can be found at <http://www.nlr.gov/case/09-CA-168156> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570, or by calling (202) 273-1940.

